sentence of the last 6th paragraph the letter says: "We also enclose a letter dated 8th February, 1977 from National Timber & Trading Co. which mentions that the sleepers are the property of Pakistan Government." I cannot regard that by this portion of the letter the first respondent was holding out that the sleepers belonged to the appellant. It was an indication as to what the second and third respondents had been asserting. It does not detract from the fact that the first respondent had no relationship with the appellant. At the most, the assertion was used for the purpose of seeking latitude from the Collector in his request that the sleepers be removed from the jetty or State land.

On the evidence adduced, I cannot see anything in the acts of the first respondent, singly or considered together, which would make it owe a duty to the appellant or give the appellant a right against the first respondent. The acts of the first respondent were all towards the second and third respondents.

Considering all the circumstances, assuming that the appellant has made all payments that are due to the second and third respondents and the second and third respondents have also done the same to the first respondent, it is difficult to understand why the second and third respondents are not making this application, since they are the ones who would appear to have the right under their contract with the first respondent. Indeed, they are even supporting the application. Unfortunately, in this matter they are not on the same side as the appellant. Their affidavit cannot be said to establish that by right the sleepers should be taken to have been delivered to the appellant or that the appellant has the right to take them away. By a term of their contracts with the first respondent delivery of the sleepers to them is on f.o.b. basis into vessels to be named by them. On this consideration and by their inaction, it can only be construed that even their own right is questionable. Consequently the right of the appellant cannot be said to be any better.

I do not think it is necessary to go into the other questions dealt with by the learned trial judge. They are merely ancillary issues which need only be considered if the appellant has established a right to the sleepers.

But I would note the observations of the learned trial judge to the effect that if the injunction could be granted, even with the conditions as stipulated by the appellant, the courts would have no jurisdiction to enforce relief against the breach of an engagement entered into with a foreign government. See, 21 *Halsbury* 3rd Edition, para. 736 p. 351.

The appeal is dismissed. Costs to the first respondent to be borne by the appellant, and, in view of their stand in this matter, by the second and third respondents.

Raja Azlan Shah and **Wan Suleiman F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Balendran & Ong; A.L. Looi & Co.*

COLLECTOR OF LAND REVENUE, FEDERAL TERRITORY v. GARDEN CITY DEVELOPMENT BERHAD

[F.C. (Lee Hun Hoe C.J. (Borneo), Wan Suleiman & Chang Min Tat F.JJ.) November 8 & December 14, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 95 of 1978]

Land Law — Classification of land — Land alienated before the coming into force of National Land Code — Nature of land title — Category of use — Registry title — Town land — Land to be used neither for agricultural nor for industrial purposes — Need to apply for imposition of category of use for land to be used for building — Appeal against decision of City Planning Committee — Time for appeal — Whether landowner required to accept diminution in title from freehold to lease — National Land Code, ss. 2, 4(1), 53, 54, 110, 124, 128 and 418.

In this case the respondents as owners of the land in question wished to develop it and they applied for sub-division and conversion of the land. Without waiting for such approval, they obtained the consent of the Datuk Bandar, Kuala Lumpur, for the construction of a substantial commercial building on the land. Subsequently they were informed by the Director of Lands and Mines, Federal Territory that the Land Executive Committee had decided that their application would only be approved if (a) the respondents made certain payments for premium and tax on the change of the category of use of the land to building and (b) they accepted a 99 year lease in exchange for their title. The respondents failed to surrender the title or pay the premium. The Collector of Land Revenue served a notice on them under section 128 of the National Land Code to remedy their failure to alter the condition of land use "from agriculture to commercial." The respondents thereupon applied by Originating Motion for an order that the Collector of Land Revenue cancel the notice on the ground that the notice was bad and invalid. It was contended for the respondents as there was no expressed endorsement on the document of title pertaining to the category of land use, there was no necessity for them to apply for conversion. The application was allowed in the High Court and the appellant then appealed to the Federal Court.

Held, allowing the appeal: (1) the land in question was town land and on the coming into force of the National Land Code came under the provisions of section 53(3) of the Code which provides that it shall be used neither for agricultural nor for industrial purposes;

(2) in order to use the land for building, the owners have to apply for the imposition of the category of building under section 124 of the National Land Code;

(3) in this case the respondents have failed in erecting the building to apply for the imposition of the category "building" to their title and this failure constituted a breach of condition by reason of which action under section 128 of the National Land Code could and was taken.

Case referred to:-

(1) *Pengarah Tanah dan Galian, Wilayah Persekutuan* v. *Sri Lempah Enterprise Sdn. Bhd.* [1979] 1 M.L.J. 135.

HIGH COURT.

Kok Wee Kiat for the applicants.

Fong Seng Yee (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

Harun J.: This is an appeal under section 418 of the National Land Code (NLC). It concerns a piece of land held under Certificate of Title No: 3443 Lot 36 Section 58, City of Kuala Lumpur.

This land was first alienated to H.C. Syers on July 20, 1886 under Lease for Agricultural Land No: 746. It was 100 acres in area bounded on the north by Ampang Road and on the east, south and west by

"Chinese gardens". There are nine express conditions on the Lease, the first being that the annual quit rent payable is $20 and the last two:

"(viii) That this Lease be subject to the State Land Regulations in force for the time being, and that this Land shall not be transferred, sub-divided or mortgaged, except in accordance with the provisions therein contained (Full information as to these provisions will be given in any District Land Office).

(ix) That this Lease may be forfeited if H.C. Syers or those claiming under him, fail to comply with any of the foregoing conditions."

On March 8, 1894, H.C. Syers transferred the land to Loke Yew and as a result Lease No: 746 was "substituted and Cancelled in exchange for Certificate of Title No: 495" the land now measuring 101 acres 2r. 37.3p. Following a re-survey, C.T. 495 was replaced by C.T. 1189 in area 98 acres 2r. 10p. The land was then sub-divided and one of the sub-divided lots measuring 16 acres 1r. 35p. was issued with C.T. 2786 on December 22, 1896. Finally C.T. 2786 was sub-divided and one of the sub-divided lots measuring 2 acres 1r. 34p. was issued with C.T. 3443 on August 8, 1909 with the endorsement:

"Being part of the land originally granted under Lease No: 746 to H.C. Syers as appears by Certificate of Title No: 2786 now cancelled"

to Loke Yew who held the land until his death.

On June 9, 1972, the Applicants/Appellants (hereinafter called "the Company") became the registered proprietors of the land with a residential house No: 147 Jalan Ampang standing on it.

On July 20, 1972, a firm of surveyors on behalf of the Company applied to the Collector of Land Revenue, Kuala Lumpur in Form 9A NLC for sub-division of the land to enable part of the land to be surrendered for road widening purposes as required by the City Planning Committee before it could develop the land.

On February 17, 1973, the Collector in response to the said application for sub-division replied to the Company that it should first apply for conversion under section 124 NLC. In the meantime, the Datuk Bandar, Kuala Lumpur had approved the Company's application to construct an office-cum-shopping complex on the land.

On April 13, 1973, the Collector referred to his letter of February 17, 1973 and stated that the Quit Rent payable on the land was at the residential house rate of 2 sen per sq. ft. but as the Datuk Bandar, Kuala Lumpur had approved the construction of a commercial building thereon, the Quit Rent should be at the rate of 12 sen per sq. ft. The Quit Rent however, could only be increased by the State Authority and this was the reason why application had to be made under section 124 NLC to impose a new express condition on the land.

On June 7, 1973, the Company, in response to the Collector's letter of April 13, 1973, applied for conversion under section 124 NLC. The residential house on the land was demolished and in September 1974 the Company commenced building operations of the office-cum-shopping complex which was completed in December, 1975 and is now known as the "Wisma Central". A Temporary Certificate of Fitness was issued up to the sixth-floor on January 5, 1976.

On February 1, 1974, the Federal Territory was established and the powers of the Selangor State Authority were transferred to the Land Executive Committee (hereinafter referred to as the "Land Ex. Co.") in respect of lands in the Federal Territory.

On February 14, 1975, the Director of Lands & Mines of the Federal Territory conveyed to the Company the decision of the Land Ex. Co. regarding its applications for conversion and sub-division to the effect that the applications will not be considered as submitted but approval will be given if the Company would first apply to surrender its perpetuity title and accept in exchange a Lease for 99 years for the portion of the land retained by them. The Company was also required to pay additional premium and new taxes amounting to $656,471/-.

On May 13, 1975, the Company through its Solicitors appealed to the Land Ex. Co. to reconsider their decision on the grounds that the surrender of its perpetuity title in exchange for a 99-year lease was tantamount to deprivation of property and contrary to Article 13 of the Federal Constitution.

On January 13, 1976, the Director of Lands & Mines conveyed to the Company's Solicitors the decision of the Land Ex. Co. that its appeal had been rejected. The Company however say that it never received this letter.

On February 17, 1976, the Director of Lands & Mines wrote to the Company referring to his letter of January 13, 1976 and stated further that the decision of the Land Ex. Co. of February 14, 1975 was to be implemented forthwith. The premium payable was however reduced to $623,199 and was payable within one month of February 17, 1976. The Company has neither made an application to surrender the title as suggested nor paid the further premium.

On July 12, 1976, the Collector issued a Notice in Form 7A under section 128 NLC as follows:

"Whereas I the undersigned am satisfied that a breach of the condition scheduled below has arisen in that —

Failure to alter condition of land use from Agriculture to Commercial.

Now therefore in exercise of the powers conferred by section 128 of the National Land Code I hereby require you within a period of three months from the date of this notice to take the following action to remedy this breach —

From Agriculture to Commercial by payment of $623,199 as stated in this Department's letter Bil. (22) dlm. PTG/WP-6/305/74 dated 17 February 1976.

Dated this 12 day of July 1976.

Sgd.
Collector of Land Revenue
Federal Territory."

This Notice was served on the Company on July 12, 1976.

On October 11, 1976, the Company filed this appeal against the decision of the Collector to issue the aforesaid Notice.

On January 6, 1977, the Collector filed a Notice of Motion to set aside these proceedings on the following grounds:

(i) That the application is vague, ambiguous and wrong in law.

(ii) That the applicant failed to make an appeal to the High Court and has already exhausted his remedies under the National Land Code.

(iii) That the court has no jurisdiction to entertain the application of the applicant.

At the hearing of an earlier appeal, O.M. 44/76, dealing with similar issues, the learned Senior Federal Counsel had indicated that he was not proceeding with his application to set aside the proceedings and agreed that this appeal be heard on the merits.

The following facts are not in dispute:

(i) Certificate of Title No: 3443 is a grant in perpetuity.

(ii) There is no express condition regarding user of land endorsed on the title.

(iii) A residential house No: 147 Jalan Ampang stood on the land until it was demolished in 1973 or 1974.

(iv) The quit rent on the land was imposed at the rate for a residential house.

(v) Municipal rates were assessed at the rate for a residential house.

(vi) The Wisma Central was built with the approval of the Datuk Bandar of Kuala Lumpur.

There are two main grounds of appeal viz:

(i) That as there was no condition regarding the use of the land there could be no breach of condition.

(ii) That in any event the remedy of the breach is contrary to law.

Breach of Condition:

Is there a condition regarding user and if so what is it? The Collector says there is and that it is 'agricultural' as the title to the land clearly states that it is derived from the original Lease for Agricultural Land granted to H.C. Syers. It seems to me that if the land use is 'agricultural' then house No: 147 Jalan Ampang had existed all these years in breach of that condition. But was there in fact a breach? I should think not because the Land Office had all along treated the land as residential for the purpose of revenue collection and it is too late now to say that the land is agricultural since the fact of such collection of revenue at the enhanced rate for a residential house has constituted an acquiescence and waiver of any breach.

In any event the title describes the land to be "situated in the Town of Kuala Lumpur..." as early as 1909. Before the coming into force of the National Land Code the land was subject to the provisions of the Land Code F.M.S. Cap. 138 which by section 35 enacted:

"When alienated land is brought within the boundaries of a town or village any condition as to cultivation of such land, ... shall cease to be operative."

Further by section 32 of the same Code:

"(i) No town land... shall be used for the erection of any building... unless such land is held under... a certificate of title."

Read together these provisions show that it was the intention of the legislature to encourage the erection of buildings and to discourage agriculture within town limits and the fact that the land here was issued with a Certificate of Title is to give effect to that intention. The only other provision which the proprietor was required to comply before erecting any building is to apply for sub-division but this was principally to enable the State to revise/increase the rent. For these reasons, I find in fact and in law that before the commencement of the NLC the land ceased to be agricultural land and was town land.

It could thus be seen that there was no impediment to the building of the Wisma Central before the coming into force of the NLC on January 1, 1966. Has the new Code altered the rights of the proprietors?

Section 4 NLC reads:

"(1) Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act:

Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act."

The exceptions do not apply to this case. It follows that the rights of proprietors acquired under the old laws are preserved but subject to the provisions of the new Code.

The NLC contains both substantive and procedural laws. This fact explains the complexity of interpreting its provisions and the task is not made any less onerous when it is appreciated that the NLC is a law consolidating 43 separate laws dealing with land and at the same time provides the mechanics to solve problems of land administration created over a period of a hundred years. It is against this background that we have to examine any new provisions affecting old rights. One of the innovations introduced by the NLC is the method by which land use is regulated. This is achieved by declaring that all lands are subject to an *implied condition* as to user.

There are three categories of land use:

(i) Agriculture : section 115 NLC.
(ii) Building : section 116 NLC.
(iii) Industry : section 117 NLC.

To determine as to which particular category any land is subject to, the NLC provides that the category of land use be endorsed on the document of title: section 52(1). To implement the scheme, two separate exercises are contemplated:

(i) The State Authority is to declare which areas of the state are for agriculture, building or industry as the case may be: section 52(2) and section 54. As far as is known, no declaration has yet been made in respect of the Federal Territory under either of these provisions.

(ii) The endorsement of the category of land use on the titles: section 52(2) and section 54(1).

To implement this, alienated lands are placed in three separate classes, viz:

(i) *New Lands:*

Lands alienated under the NLC — the endorsement is made as and when the titles are issued: section 52(2) & (3) in which event the implied conditions under section 115; or section 116; or section 117 will apply.

(ii) *Old Lands:*

Lands alienated *before* the NLC came into force: section 53, the transitional stage.

(iii) *Declared Lands:*

Lands alienated before the NLC but have become subject to a declaration under section 54 in which event the implied conditions under section 115; or section 116; or section 117 apply, i.e. old lands subject to new laws.

In both old and declared lands the existing rights of proprietors are preserved but in the event of a breach of the new implied conditions there is provision that the land shall not be liable to forfeiture except upon payment of compensation: section 53(4) and section 54(4).

The entire scheme is consistent with the modern practice of 'zoning' the country into specified areas for agricultural; industrial; commercial; residential and recreational activities and at the same time taking into account environmental protection, pollution prevention and socio-economic needs. But the implementation of the scheme is reconciled with existing rights. In other words the provisions regarding user apply to all new lands alienated under the NLC but in respect of lands alienated under the old laws these provisions are applied subject to exceptions or modifications and where necessary the payment of compensation in the event of forfeiture should there be a breach of any condition imposed by the new Code.

In the present case the land belongs to the class of old lands in the transitional stage and the relevant provisions of section 53 NLC that apply are:

"53(1). This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.

(3) All other land to which this section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes:

Provided that this condition —

(i) shall not prevent the continued use of any part of the land for any agricultural or industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with —

(a) any building lawfully erected before that commencement, or

(b) any building erected after that commencement, the erection of which would (under section 116) be lawful if the land were subject instead to the category 'building'.

(4) Land shall not be liable to forfeiture under this Act by reason of any breach of any condition to which it is subject by virtue of this section except upon payment of such compensation as may be agreed or determined under section 434."

The land in question is not subject to an express condition requiring its use for a particular purpose and therefore section 53(1) applies. It is not used for agricultural or industrial purposes and there is therefore no breach of the implied conditions under sub-section (3). Even assuming the land was agricultural, the Wisma Central was erected after the commencement of the NLC and as it is a building within the meaning of section 116(4)(b) NLC and could have been lawfully erected if the land was subject to the building category, the proviso to sub-section (3) applies.

There is no indication in the letter of February 14, 1975 that the land is to be used for any purpose other than as an office-cum-shopping complex. The Land Ex. Co. in fact approved in principle the use of the land for this precise purpose. It follows that the present use of the land is consistent with the provisions of the new Code. In this regard it may be observed that section 53 NLC is an extension of section 35 of the FMS Land Code — the legislature first discouraging the use of town lands for agriculture and finally prohibiting it altogether.

Finally, even if there is a breach, the land is not subject to forfeiture except upon payment of compensation: section 53(4). There is no such offer here and in fact the situation does not arise. I therefore find that the new Code has not altered the rights of the proprietors.

Remedy of the Breach:

I next turn to the letter of February 14, 1975 which the Collector states in his notice should be complied with in order to remedy the purported breach. Shortly, the effect of this letter and the notice is that the Company is confronted with the situation that its land with the Wisma Central building on it will be forfeited to the State unless they surrender their perpetuity title in exchange for a 99-year lease. Surrender of title may only be made with the *consent* of the registered proprietor and the approval of the Land Ex. Co.: sections 195 to 198 NLC. There is no such consent here. To obtain such consent by withholding approval of applications for conversion and sub-division accompanied with a threat of forfeiture is improper and contrary to law. I have dealt at length in O.M. 44/76 with regard to the exchange of perpetuity titles for 99-year leases as conditions precedent to the approval of applications for conversion and sub-division and the law applicable to such applications. Suffice it to state here that the Land Ex. Co. has no power to impose such a condition and the Company are entitled to:

(i) Approval of its application for the imposition of category of land use "Building — Commercial" to be endorsed on the Certificate of Title under section 124(1)(a) NLC without any surrender of title.

(ii) Approval of its application for sub-division under section 136 NLC and issue of title in continuation in accordance with section 202(3)(a) NLC.

I hold that the notice issued by the Collector dated 12 July 1976 is void and of no effect for the following reasons:

(i) It states incorrectly that the land is subject to the category 'agriculture' when there is neither an express condition on the Certificate of Title that it be so used nor is there an implied con-

dition for such use either under the old or new Land Codes.

(ii) It is contrary to the provisions of section 53(3) NLC in that the land could not be used for agriculture.

(iii) It is contrary to the provisions of the proviso to section 53(3) NLC in that the land is exempted from the implied condition imposed by section 53 NLC as the Wisma Central was erected after the commencement of the NLC and the building would have been lawful under section 116 NLC if the land were subject to the category 'building'.

(iv) It is contrary to the provisions of section 53(4) NLC in that the land is not liable to forfeiture except upon payment of compensation as may be agreed or determined under section 434 NLC.

(v) In any event the performance of the condition to remedy the purported breach under section 128 NLC is contrary to law as it is conditional on the surrender of the Certificate of Title to which the Company has not given its consent and which condition the Land Ex. Co. has no power to impose.

There will be an order that the Collector of Land Revenue, Federal Territory do cancel the Form 7A Notice dated July 12, 1976 issued to the Company; and

That the Collector do pay the costs of this application.

From the above judgment the respondent appealed to the Federal Court.

FEDERAL COURT.

Fong Seng Yee (Senior Federal Counsel) for the appellant.

Kok Wee Kiat for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J.: When the respondents as owners of the land in question sought to develop it and consequently to sub-divide it in order to surrender part or parts of it, under section 200 National Land Code (NLC), for road purposes as required by the City Planning Committee for the Federal Territory of Kuala Lumpur, they were told that they had first to apply for conversion under section 124 NLC of the category of land use to building.

The term conversion has been criticised as loosely used. It does not occur anywhere in the National Land Code, but it is understood by everyone including the respondents and their solicitors that by it is meant an application to vary the category of use to which the land can be put. It may be convenient to continue to use the word conversion.

The application for conversion was made by the respondents on June 7, 1973.

But without waiting for approval, the respondents obtained the consent of the Datuk Bandar, Kuala Lumpur for the construction of, and they proceeded to erect, a substantial commercial building which was completed in December 1975 and is now known as the Wisma Central. A temporary certificate of fitness for occupation up to the 6th floor was issued on January 5, 1976.

On February 14, 1975 (while the construction was in progress) the Director of Lands and Mines for the Federal Territory advised the respondents of the decision of the Land Executive Committee to whom the powers of the State Authority for Selangor in respect of lands in the Federal Territory had been transferred upon the establishment of the Federal Territory on February 1, 1974, that their application would only be approved on the following conditions:

Document of Title	:	Registry Document of Title
Nature of Document of Title	:	99 year lease
Premium	:	$6.00 per square foot (30% of $20/- per square foot)
Quit rent	:	12 sen per square foot
Survey fees, etc.	:	Prescribed rate
Category of land use	:	Building

Express conditions:

(i) The land shall be used for shopping and office complex.

(ii) Development on the land shall comply with the Development issued by Datuk Bandar.

2. Will you please, therefore, settle the following payments:

Additional Premium	$643,599.00
New tax	12,872.00
Total	$656,471.00

It will be observed that the category of land use would be changed or varied to building and that the most difficult pill for the landowners or any landowner to swallow, though it is believed that some are more quiescent, was the obligation to accept a leasehold of 99 years for their title in perpetuity. The respondents' appeal not to require this diminution in title was however rejected by letter dated January 13, 1976. The landowners denied that they ever received this letter but there can be no doubt that they received a following letter on or about February 17, 1976 that the decision of the Land Executive Committee was to be implemented forthwith. The premium was however reduced to $623,199 and made payable within one month.

Since the respondents failed to surrender the title or pay the premium, the Collector of Land Revenue, Federal Territory served on them a notice in Form 7A under 128 NLC. The notice is as follows:

"Whereas I the undersigned am satisfied that a breach of the condition scheduled below has arisen in that

Failure to alter condition of land use from Agriculture to Commercial.

Now therefore in exercise of the powers conferred by section 128 of the National Land Code I hereby require you within a period of three months from the date of this notice to take the following action to remedy this breach —

From Agriculture to Commercial by payment of $623,199 as stated in this Department's letter

Bil (22) dlm. PTG/WP/-6/305/74 dated 17 February, 1976.

Dated this 12 day of July 1976.

Sgd.
Collector of Land Revenue
Federal Territory"

The notice was dated July 12, 1976 and served the same day.

Section 128 NLC which was referred to in the notice, reads as follows:

"128. (1) Where —

(a) any alienated land is liable under section 127 to forfeiture to the State Authority for breach of any condition, and

(b) it appears to the Collector that the breach is capable of being remedied by the proprietor within a reasonable time,

the Collector shall serve, or cause to be served, on the proprietor a notice in Form 7A specifying the action required for remedying the breach, and calling upon him to take such action within the time therein specified.

(2) Upon the service of any notice under sub-section (1), the Collector shall endorse, or cause to be endorsed, on the register document of title to the land in question a notice to the effect that the land is subject to action for breach of condition.

(3) The service of any notice under sub-section (1) shall operate as a waiver by the State Authority, conditional upon strict compliance with the requirements thereof, of the right of forfeiture existing by reason of the breach to which it relates; and —

(a) if the notice is complied with, the note endorsed under sub-section (2) shall be cancelled accordingly;

(b) if the notice is not complied with, the Collector shall take action in accordance with the provisions of section 129."

In reply, the respondents on October 14, 1976, (somewhat beyond the 3 months specified in the notice) applied by originating motion for "an order that the Pemungut Hasil Tanah Wilayah Persekutuan (Collector of Land Revenue, Federal Territory) do cancel the notice ... on the ground that the said notice is bad in law and invalid." The contention which appeared in the only relevant paragraph, paragraph 8, of the affidavit in support was that "there is no expressed endorsement on the said document of title pertaining to the category of land use to which the said land is for the time being subject."

The learned judge, after hearing full arguments, including the contention of Senior Federal Counsel for the Collector of Land Revenue, Federal Territory that the application was vague, ambiguous and wrong in law, that the applicants had failed to make an appeal to the High Court, and had already exhausted their remedies under the NLC and that the court had no jurisdiction to entertain the application, allowed it. From that order, the Collector of Land Revenue, Federal Territory appeals.

The respondents now say that they were misled by the Collector of Land Revenue into making the application on June 7, 1976 for conversion. There was no necessity for the conversion to building as their land was not subject to any condition. As for their earlier application for sub-division, in Form 9A, for the purposes of providing access roads and surrendering such parts or parts of the land to the Government for such purposes, they also say it was a mistake. With the greatest of respect, if by this contention they mean seriously, that they would and could have built their complex, the Wisma Central, without any provisions for the necessary and convenient access roads and facilities or argue that they be given back such land, I do not think they have considered their own interests properly. But insofar as "conversion" is concerned, the respondents do seriously contend that there is no express endorsement on the document of title pertaining to the category of land use to which the land is subject. They were therefore entitled to do what they liked with the land, so long as they complied with the ordinary requirements of law in regard to planning and municipal or town-board control. They reinforce their argument with the suggestion that previously, despite the contention of the appellant that it was agricultural land, a substantial house No. 147 Ampang Road with an annual rateable value in 1972 of $160,000 had been allowed to be built on the land, so that by demolishing this building and erecting in its place the Wisma Central with the permission of the Datuk Bandar Kuala Lumpur, they were only carrying on the permitted user of the land and they had not committed any breach of any condition of title.

The basic question therefore is whether there is a condition for a specified category of land use and if so, what it is. The respondents' view of their case is that, by administrative error or omission, their land has not been classified. But as will be seen later, both the Land Code (F.M.S. Cap. 138), which was in force from January 1, 1928 until its repeal and replacement by the NLC on January 1, 1966 and the NLC make classification the foundation of land administration and it would have to be a strong case for the respondents for them to succeed on this argument.

"The house that Jack (Torrens) built" is a house of deliberate planning. Over the years it had been extended. In the developed version that is the NLC, the development of an orderly system of land transfer, following as it did on the heels of earlier and less detailed versions, must necessarily seek to make one homogeneous system of the several practices in the country. Those who knew of the system of registration of deeds previously practised in Penang and Malacca and had gone through the trauma of an intermediate process under the National Land Code (Penang and Malacca Titles) Act, 1963 can recall the difficulties of achieving an unified system. In the other states of West Malaysia, the transfer was certainly not so traumatic, but it ought to be realised homogeneity could only be achieved by filling in the blanks in the earlier and less detailed system. The NLC therefore plans a classification of land and of use. By section 51, all land above the shoreline shall be classified as (a) town land, (b) village land and (c) country land. Then the NLC provides that all lands alienated under the Act (by which is meant the NLC) shall be used for agriculture, building or industry, subject to such express conditions as may be included or endorsed on the documents of title and the implied conditions under sections 115, 116 or 117 as the case may be. And it seeks in the case of lands alienated before the commencement of the Act to make effective provisions for the absorption of such lands into the new system. These provisions are specific for each class of land and use. The question for determination by this court can therefore be answered by first determining under the previous Land Code the twin characteristics of each land holding: (1) the nature of the land title and (2) the category of use to which the land can be put, and then by ascertaining how the NLC dealt with it.

The Certificate of Title No. 3443 which is the title to the land in question reads as follows:

Serial No. 22976
GOVERNMENT OF SELANGOR
(Schedule A. Registration of Titles Enactment)
CERTIFICATE OF TITLE
NO. 3443
Register of Titles, Vol. XLII, Folio 113.
Registration District of Kuala Lumpur
quit rent Fifty Cents ($0.50)

Loke Yew of Kuala Lumpur is now proprietor, subject to such charges as are notified by memorandum written hereon, and subject to the payment at the Land Office, Kuala Lumpur of the annual Quit-rent of $0.50 (Fifty Cents) of all that piece of land situated in the Town of Kuala Lumpur Allotment 36 section 58, containing by measurement 2 acres 1 rood 34 poles more or less which said piece of land, with the dimensions, abuttals and boundaries thereof, is delineated on the plan drawn on these presents and more particularly on Revenue Survey plan number 6963, deposited in the office of the Superintendent of Revenue Surveys, Selangor. Being part of the land originally granted under Lease No. 746 to H.C. Syers as appears by Certificate of Title No. 2786 now cancelleth.

It was issued before the coming into force of the F.M.S. Land Code on January 1, 1928.

There is however, a savings provision in section 1(ii) which preserves its validity:

"(ii) Nothing in this Enactment contained shall affect the past operation of or anything done under any Enactment hereby repealed, but any right, liberty, privilege, obligation or liability imposed or incurred in respect of land alienated under any previous Land Enactment shall except as hereinafter expressly provided, be subject to the provisions of this Enactment."

Under the F.M.S. Land Code, titles to land are in the form of grants, leases of State land, certificates of title, and extracts of mukim-registers. The mukim register contains the particulars of all land in the mukim alienated under entry therein: section 65. The issue document of title of such land is in the form of an extract from the register issued under the hand of the relevant Collector of Land Revenue: section 67. This extract is, from the office of the Collector in the Land Office of the area, generally known as a Land Office title. The other titles, grants, leases of State land and certificates of title, are in duplicate, one set being kept in the Registry of Titles under separate registers and dealt with by a Registrar of Titles appointed under the Code and who is a different person from the Collector. Such titles are known generically as Registry titles. There can be no doubt therefore that C.T. 3443 is a Registry Title and not a Land Office title.

As for the use of the land in C.T. 3443, the certificate clearly states that the land is within the Town of Kuala Lumpur. In section 2, there is a definition of town land. It reads

"'Town land' and 'village land' mean respectively all land included within the boundaries of a town or village declared under this or any previous Land Enactment."

It is clear therefore that the land had become town land on the coming into force of the F.M.S. Land Code.

Senior Federal Counsel for the appellant thought that the fact that the land had, as shown in the certificate of title itself, been carved out of a lease for agricultural land, in the absence of any endorsement of the use to which the land might be put on the certificate itself, preserved its characteristic of agricultural land. His reliance on section 35 of the F.M.S. Land Code which reads

"35. When alienated land is brought within the boundaries of a town or village any condition as to the cultivation of such land, other than a condition forbidding the cultivation of any particular product or class of products, shall cease to be operative."

to advance the argument that while it rendered the condition for cultivation inoperative, it did not eliminate it altogether, is, with respect, without foundation. This particular section, as indeed all enacted law, should not be read for anything more than what it plainly says. By definition, the land in C.T. 3443 is town land.

It now remains to see how a piece of town land held under a Registry title is dealt with on the coming into force of the NLC and how it is absorbed into the new system.

The NLC first provides a savings clause in section 4(1) in words identical with those in the F.M.S. Land Code.

"4. (1) Nothing in this Act shall affect the past operation of, or anything done under, any previous land law or, so far as they relate to land, the provisions of any other law passed before the commencement of this Act.

Provided that any right, liberty, privilege, obligation or liability existing at the commencement of this Act by virtue of any such law shall, except as hereinafter expressly provided, be subject to the provisions of this Act."

It next takes cognisance of the two distinctions of title and defines them separately as Land Office titles and Registry titles. They are thus defined:

"'Land Office title' means title evidenced by a mukim grant or mukim lease or by any document of title registered in a Land Office under the provisions of any previous land law," and

"'Registry title' means title evidenced by a grant or State lease or by any document of title registered in a Registry under the provisions of any previous land law."

On these statutory definitions, the conclusion must be reached that C.T. 3443 remains a Registry title.

It is important to note at this stage that under section 52, three categories of land use are contemplated for all lands alienated under the Act so that it becomes necessary that all lands alienated before the commencement of the Act should be made, at one stage or other, to fall within one of the three categories of agricultural, building or industrial purpose with the implied conditions spelled out in sections 115, 116 and 117 respectively.

In dealing with lands alienated before the commencement of the Act, that is with lands alienated before 1966, under the F.M.S. Land Code or any other previous land law, or rather in absorbing such lands into the new system, the NLC has clearly to make provisions to preserve such express conditions as are endorsed on the title and to impose such implied conditions as will, if necessary by several stages, bring the land completely into the general scheme of land management. Thus section 110 provides that express conditions and restrictions in interest (if any) on the old document of title are retained, and certain conditions, as are applicable to the case in hand, are implied. Section 110, in its relevant parts, reads

"110. Land alienated before the commencement of this Act shall be subject as from that commencement to the following conditions and restrictions in interest —

(a) such express conditions and restrictions in interest (if any) as immediately before that commencement, were endorsed on the document of title thereto (or, in the case of a certificate of title, referred to therein);

(b) in the case of land to which section 53 applies, the implied condition specified in sub-section (2) or (3) of that section, as the case may be;

...."

It is not here the case of express conditions, but it is very much the case of the implied condition specified in section 53(2) or (3) as the case may be, as provided in section 110(b) above.

Section 53 reads:

"53. (1) This section applies to all land alienated before the commencement of this Act other than land which, immediately before that commencement, is subject to an express condition requiring its use for a particular purpose.

(2) All land to which this section applies which is at the commencement of this Act —

(a) country land, or

(b) town or village land held under Land Office title, shall become subject at that commencement to an implied condition that it shall be used for agricultural purposes only:

....

(3) All other land to which this section applies shall become subject at the commencement of this Act to an implied condition that it shall be used neither for agricultural nor for industrial purposes:

Provided that this condition —

(i) shall not prevent the continued use of any part of the land for any agricultural or industrial purpose for which it was lawfully used immediately before the commencement of this Act; and

(ii) shall not apply to any part of the land which is occupied by or in conjunction with —

(a) any building lawfully erected before the commencement, or

(b) any building erected after that commencement, the erection of which would (under section 116) be lawful if the land were subject instead to the category 'building'."

Now C.T. 3443 not being country land or town land held under a Land Office title, the provisions of section 53(2) do not apply, so that there is no implied condition that it shall be used for agricultural purposes only. But it is land other than country land or town land held under a Land Office title. It is town land held under a Registry title and it comes fairly and squarely within section 53(3) so that it "shall be used neither for agricultural nor for industrial purposes." The conclusion that there is to be implied a condition that it shall be used for the only other purpose left is a very tempting one to make, but it would be a wrong one to jump to. To conclude thus would be to disregard the peculiar language used in the section and to re-write it to read "it shall be used for building purpose only." The language of the subsection must be given effect to and the only way effect can be given to the words is the interpretation that while such a piece of land may not be used for agricultural or for industrial purposes, it may not also be used for building purposes except that under the proviso (ii)(a) to sub-section (3) above, any building erected hitherto shall not constitute a breach of this implied condition. Confirmation for this view appears to be found in the proviso (ii)(b) to sub-section (3) above.

Now, a date is provided in section 54 for the absorption of lands alienated before the commencement of the Act into the defined categories of land use under the NLC. On that date to be specified by the State Authority, or in the case of lands within the Federal Territory, the Land Executive Committee, not being less than a year from the date of notification, the land in the case of section 53(3) shall be subject to the implied condition that the category of land use shall be "building". Section 54 reads:

"54. (1) The State Authority may, by notification in the Gazette, specify any area of the State, and prescribe a date (not being less than one year from the date on which the notification is published) on which the provisions of this section are to take effect therein; and, on the date so prescribed —

(a) all land in that area which was alienated before the commencement of this Act shall become subject to a category of land use determined as provided by sub-section (2) (which category shall, on or before that date, be endorsed on the register document of title thereto); and

(b) the conditions to which any such land is subject shall become as mentioned in sub-section (3):

Provided that —

(i) the provisions of this section shall not apply to any land in the area which has previously become subject to any category of land use pursuant to an application by the proprietor under section 124, or to any direction given by the State Authority under sub-section (3) of section 147 on sanctioning its amalgamation with any other land; and

(ii) the State Authority may in any such notification exempt any land in the area from the operation of this section.

(2) The category of land use to which land becomes subject by virtue of this section shall be —

(a) in the case of land previously subject to the implied condition specified in sub-section (2) of section 53, the category 'agriculture';

(b) in the case of land previously subject to the implied condition specified in sub-section (3) of that section, the category 'building';

(c) in the case of land previously subject to any express condition requiring its use for a particular purpose, such category as is appropriate to that purpose.

(3) Where any land becomes subject to a category of land use by virtue of this section —

(a) it shall become subject also to such express conditions as the State Authority may have directed under section 123, and to such implied conditions as are applicable thereto by virtue of section 115, 116 or 117; and

(b) all conditions to which the land was previously subject shall cease to have effect, except those implied under section 114.

(4) Land becoming subject to a category of land use by virtue of this section shall not be liable to forfeiture under this Act by reason of any breach of any condition to which it becomes subject as mentioned in paragraph (a) of sub-section (3) except upon payment of such compensation as may be agreed or determined under section 434:

Provided that this sub-section does not apply to any express condition which has been subsequently varied on the application of the proprietor under section 124.

(5) Copies of any notification under this section shall be published in accordance with section 433."

Neither the High Court nor the Federal Court has been advised whether action has been taken under section 54. I shall assume, as it appears in all probability to be so from the evidence in this case, that there has been no notification of any such date.

This means, if somewhat inconveniently, that town or village land held under a Registry title under the previous Land Code which is caught under section 53(3) or section 53(3) land, is in a sort of "limbo". It is certainly neither for agricultural nor for indus-

trial purposes. Nor is it for building purpose. Until action is taken under section 54 or the landowner applies under section 124, it does not become subject to building purpose.

It may seem somewhat incongruous that section 53(3) land which is eventually to be used for building purpose since it could not be used for any other purpose should have to be subject to an application under section 124 for an "alteration" of the category of land use. But the heading of this section does not convey its full scope. The provisions include an application for the imposition of any category. Section 124 reads:

"124 (1) The proprietor of any alienated land may apply to the State Authority under this section for —

(a) the alteration of any category of land use to which the land is for the time being subjected or, *where it is not so subject for the imposition of any category thereon*:

...."

The words italicized thus impose on the landowner of section 53(3) land which has not had the benefit of action under section 54 the duty to apply for the imposition of the category of use for building, if he proposes to build thereon any building of the type listed in sub-section (4) to section 116, *inter alia*, for (a) residential purposes and (b) administrative or commercial purposes.

For these reasons, I come to the conclusion that the respondents have failed in erecting their Wisma Central to apply as they must do, for the imposition of the category "building" to their title and that this failure is a breach of condition, by reason of which action under section 128 may be taken. The action taken however under this section by the notice in Form 7A was for failure to alter the condition of land use from agriculture to commercial. The respondents contend that their land was not agricultural and I would agree but with respect not for the reasons advanced by them. Further, there is no specific category of land use known as commercial. The Collector of Land Revenue was therefore wrong in his notice but the Director of Lands and Mines used the correct word "building" in his advice of February 14, 1975 and it could not be said that the respondents were misled or that the mistake was so fundamental that the whole proceedings should be voided. If they had correctly advised themselves on the law as to their proper duties before undertaking the construction of their office and shopping complex, they would have known that they should first apply for the imposition of the category of land use for their land which at the relevant time had no category of land use.

Senior Federal Counsel for the appellant also took objection to the hearing of respondents' motion on the ground that the appeal to the High Court from the decision of the Director of Lands and Mines Federal Territory made on February 17, 1976 exceeded the 3 months allowed in section 418 NLC for such an appeal by about 17 months.

Section 418 reads:

"418. (1) Any person or body aggrieved by any decision under this Act of the State Commissioner, the Registrar or any Collector may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the court.

(2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the court shall make such order thereon as it considers just.

(3) In this section 'decision' includes any act, omission, refusal, direction or order."

I am of the view that that decision was a decision within the scope of this section. With respect, I do not see how time should run from the date of the notice in Form 7A and not from the decision but even then, the appeal made by originating motion was out by a day at least. It was of course open to the respondents to apply for an extension of time. I have however dealt with the appeal in substance rather than on procedure, as being more satisfactory and, also, in the order in which Senior Federal Counsel conducted the appeal.

It is to be appreciated that the Federal Court has since in *Pengarah Tanah dan Galian, Wilayah Persekutuan* v. *Sri Lempah Enterprise Sdn. Bhd.*[1] held that in an application for alteration of the category of land use, the State Executive Council may not require the landowner to accept a lease of 99 years for his title in perpetuity. I am now advised that it is not in the contemplation of the State Executive Committee to appeal from the decision in the *Sri Lempah* case and I therefore expect that the State Executive Committee will now indicate that the respondents are not required to accept a diminution in the title. The payments of a substantial premium or new quit rents did not arise in that case since the landowner agreed to such payments neither did the question of surrender for roads, etc. which it had applied to surrender. Here the respondents still resisted the payment of the premium and the increased quit rent; they must be left to consider whether in the light of this judgment, they should not welcome the offer made to accept payment even at this late stage.

But for the reasons given, I would allow the appeal with costs here and in the court below.

Lee Hun Hoe C.J. (Borneo) and **Wan Suleiman F.J.** concurred.

Appeal allowed.

Solicitors: *Mah-Kok & Din.*